

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is dated December ____, 2007, between the State of Iowa and Central Iowa Employment and Training Consortium (CIETC), the City of Des Moines, Boone County, Dallas County, Jasper County, Madison County, Marion County, Polk County, Story County, and Warren County (Member Governments).

Stipulated Recitals

I. Background

CIETC is a governmental organization created by the Member Governments under Iowa Code chapter 28E. CIETC provided a wide array of workforce development services for individuals and employers located in central Iowa. These services include job search and placement assistance, career counseling, individual job development, job clubs, skill upgrading and retraining, and job readiness training. CIETC was legally dissolved on January 3, 2007, subject only to winding up its affairs.

CIETC entered into a Regional Grant Agreement with Iowa Workforce Development (IWD) under which CIETC received federal funds, including, but not limited to, the Workforce Investment Act, Wagner Peyser, and the Temporary Assistance to Needy Families and certain direct grants. The Member Governments deny liability for CIETC's obligations.

II. State Auditor's Report and the Federal and State Investigations.

The State Auditor issued a report on March 31, 2006, finding, among other alleged irregularities, that CIETC paid excessive compensation to certain employees. After the Auditor's report issued, federal, state and local law enforcement began investigating possible misuse of federal and state funds.

As a result of the subsequent investigations, the employment of three CIETC employees was terminated, the State of Iowa terminated three of its employees, and a federal grand jury indicted four former CIETC employees, two former CIETC board members, and one former IWD employee. One former CIETC employee has been convicted of perjury, and one former CIETC employee and one former CIETC board member have pled guilty to criminal charges arising out of the alleged misuse of federal

funds. Federal criminal charges against the four remaining indicted individuals are pending.

CIETC and the Member Governments have now identified potential claims against one or more of these parties related to the criminal indictments and have identified potential claims against other parties for all or a portion of the losses sustained by CIETC and IWD.

III. Disallowed Costs and the Demands for Repayment.

Based on IWD's investigation after the Auditor's report and since March 2006, the State of Iowa, through IWD, has disallowed about \$1,400,000 in misused federal funds by or through CIETC, including claims relating to sub-recipients Creative Visions and Iowa Comprehensive Human Services. CIETC denies the amount of disallowed costs and has appealed IWD's determination of disallowed costs. The appeals of these matters are pending before an administrative law judge.

In April 2007, the United States demanded that the State of Iowa repay the federal government \$1,300,000 in compromise and settlement of all the allegedly disallowed costs identified since March 2006. The State of Iowa, CIETC, and its Member Governments dispute which entities are responsible to repay the allegedly misspent federal funds.

IV. Repayment Responsibility and Final Resolution.

The State of Iowa, CIETC, and the Member Governments want to pay the federal government the funds that have been demanded and finally resolve all disputes over responsibility for the payment. To avoid expending additional resources to dispute responsibility for repaying the federal government and to put this matter behind them, the State of Iowa, CIETC, and the Member Governments are willing to contribute cash and non-cash assets to pay the federal government a total of \$1,300,000 as a compromised sum negotiated by the State of Iowa.

The parties, therefore, agree as follows.

1. **Payment to the Federal Government.** The State of Iowa will repay the federal government the \$1,300,000 to be allocated between and among federal departments and agencies as may be determined by the federal government. The State of Iowa will advise the federal government of the terms of this agreement prior to its

finalization. The State will advance \$800,000 in state funds and CIETC and the CIETC Member Governments will contribute \$500,000 in cash. The State of Iowa and the Member Governments may recoup their cash advances from the proceeds of any recoveries from parties who may be responsible for all or part of the funds repaid to the federal government as provided under the terms of this Settlement Agreement and Release.

2. **Contribution by CIETC and Member Governments.** CIETC and the Member Governments will contribute assets—both cash and assigned assets—to the State of Iowa toward the \$1,300,000 payment to the United States of America, to be liquidated and applied as provided in this Agreement.

3. **Cash contribution by CIETC and Member Governments.** CIETC and Member Governments will pay the State of Iowa \$500,000, using exclusively non-federal funds, within 30 days of the date this Agreement becomes effective by delivering payment to the Assistant Attorney General who represents the State of Iowa. The \$500,000 contribution by CIETC and the Member Governments includes \$197,491.20 which represents certain Risk Pool benefits from the Iowa Community Assurance Pool (ICAP) made available for and on behalf of certain CIETC Members Governments,¹ \$11,008.80 which represents certain Employers Mutual Company (EMC) insurance proceeds on behalf of a separately insured Member Government,² \$83,000 from remaining liquid assets of CIETC composed entirely of non-federal dollars, \$89,357.14 from the City of Des Moines and \$119,142.86 from Polk County.

4. **Assignment of assets by CIETC and Member Governments.** In addition to the cash contribution identified in paragraph 3, CIETC and the Member Governments hereby grant, convey, assign, and transfer to the State of Iowa all of their right, title, and interest in the following:

¹Boone County, Story County, Marion County, Warren County, Dallas County, and Jasper County.

²Madison County.

- a. All IPERS refunds relating to Ramona Cunningham, John Bargman, and Karen Tesdell;
- b. All restitution that any court may award CIETC and/or the Member Governments arising out of any criminal proceeding involving Ramona Cunningham, John Bargman, Karen Tesdell, Archie Brooks, Dan Albritton, and Jane Barto and any other person who is charged criminally for any matter covered by this Agreement;
- c. All claims and causes of action against the successive theft insurance policies or bonds issued by EMC Insurance Company as well as the pending claims against EMC filed under the policies or bonds; and
- d. All claims and causes of action against third parties who might be responsible for the loss or misuse of state or federal funds, or both, relating to claims covered by this Agreement, including, without limitation,
 - i. Faller & Kincheloe, CPAs,
 - ii. Casper Consulting,
 - iii. Ramona Cunningham,
 - iv. John Bargman,
 - v. Karen Tesdell,
 - vi. Dan Albritton,
 - vii. Deb Dessert,
 - viii. Archie Brooks, and
 - ix. Jane Barto.

5. **State of Iowa's cash advance.** Because the Iowa Attorney General's Office is in a superior position to maximize liquidation and recovery of the assigned

assets, the State of Iowa will advance \$800,000 of the \$1,300,000 payment to the federal government while the Attorney General's Office pursues the recovery of assigned assets.

6. **State of Iowa's efforts to recover assigned assets.** The Iowa Attorney General's Office—on behalf of the State of Iowa and in cooperation with CIETC, the Member Governments, and their counsel—will timely pursue liquidation and recovery of the assigned assets. Toward this end, a collaborative confidential relationship will be preserved between the Iowa Attorney General's Office and counsel for CIETC and counsel for the Member Governments regarding the status and strategies for pursuing such claims and maximizing potential recoveries. Within four years of the effective date of this Agreement, or 60 days prior to the expiration of any applicable statute of limitations, whichever first occurs, the Iowa Attorney General's Office will notify in writing Polk County, the City of Des Moines, ICAP, and EMC whether or not it intends to pursue further any assigned asset. Then as to any claims not being actively pursued or that there is no intention to pursue further, Polk County, the City of Des Moines, ICAP, or EMC may elect, without the payment of additional consideration, to take a re-assignment of those claims and pursue the claims.

7. **Distribution of recoveries.** After deducting its out-of-pocket expenses incurred to liquidate and recover the assigned assets, the State of Iowa will distribute any recoveries from the assigned assets as follows:

- a. The State of Iowa will retain the first \$150,000 in recoveries from the assigned assets.
- b. Any recoveries more than \$150,000 identified in subparagraph 7.a above will be split equally between the State of Iowa and ICAP up to the next \$150,000 of recoveries; and then any additional recoveries will be split equally between the State of Iowa and the Member Governments, ICAP, and EMC as specified below. The State of Iowa will pay one-half of these recoveries (i.e., recoveries above \$300,000) first to ICAP to the extent of any unreimbursed amounts advanced by ICAP for a Member Government and relating to the Intergovernmental Dispute and next ratably to ICAP, EMC, Polk County, and the City of Des Moines up to the amount of their unrecovered contributions toward the settlement amount specified in paragraph 3 above. After ICAP, EMC, Polk County, and the City of Des Moines have recovered their contributions toward settlement, then the State of Iowa will pay one-half of any recoveries ratably to the Member

Governments in proportion to their contributions to the settlement and/or CIETC operations. When those contributions have been fully reimbursed, any additional recoveries will be paid to Member Governments according to the formula set forth in the CIETC 28E Agreement.

- c. If the State of Iowa fails to recover \$300,000 within four years of the effective date of this Agreement, Polk County, the City of Des Moines, and the other Member Governments will reimburse the State of Iowa, in the same proportions as their respective contributions toward settlement, one half of the difference between the \$300,000 and the amount actually recovered. Any subsequent recoveries will be distributed as provided in sub-paragraph b above.
- d. Polk County, the City of Des Moines, and other Member Governments will reimburse the State of Iowa at the end of the four-year period any amount paid to ICAP under subparagraph 7.b., above, in regard to recoveries greater than \$150,000 and less than \$300,000.

8. Incentive funds for Region XI. CIETC will waive, release, and disclaim any interest in or entitlement to incentive funds earned on behalf of Region XI as of June 30, 2006, in the amount of \$88,500 in favor of the Regional Workforce Investment Alliance and the Regional Workforce Investment Board.

9. Job Fair money. CIETC will retain the Job Fair money, which is estimated to be about \$38,000, held in its operating account.

10. Waiver of direct grant funds. CIETC will waive its entitlement to direct grant funds from and after the effective date of this Agreement, retaining only reasonable and allocable expenses incurred up to that point.

11. Limited Release by CIETC and the Member Governments. In consideration of the foregoing and of the agreements contained in this Agreement, and except as provided in paragraph 14 and 15, CIETC and the Member Governments irrevocably and unconditionally release, acquit, and forever discharge the State of Iowa, Iowa Workforce Development, and all of their officers, directors, employees, agents and attorneys, from any and all liability from claims, demands and causes of action that relate to or arise out of certain payments by or through CIETC that were improper or

unallowable under federal and/or state law for Program Years 2003 through 2006 identified below:

- a. Any civil claims, including unjust enrichment, breach of contract, negligence, tort, or fraud, related to or arising out of the improper or unallowable payments by or through CIETC from funds received from sources identified in sub-paragraphs b-e below;
- b. Any claims for CIETC excessive executive compensation costs for Program Years 2003 through 2006 that are allocable to the grants (1) AA-12925 (WIA Formula Funds, PY 03/FY04); (2) AF-13624 (Direct Federal Grant, PY 03); (3) EM-10882 (National Emergency Grant, FY02); (4) AA-13798 (Creative Visions, Governor's 10%, PY04); (5) ES-13996 (MSFW, Wagner Peyser, PY04); (6) AA-13798 (WIA Formula Funds, PY04/FY05); (7) AF-13624 (Direct Federal Grant, PY 04); (8) AA-14675 (Creative Visions, Governor's 10%, PY05); (9) ES-14864 (MSFW, Wagner Peyser, PY05); (10) PI-14913 (Navigator, FY05); (11) AA-14675 (NE0F, Governor's 10%, PY05); (12) AA-14675 (New Iowan's Center, Governor's 10%, PY05); (13) AA-14675 (WIA Formula Funds, PY05/FY06); (14) AF-13624 (Direct Federal Grant, PY05); (15) AA-15479 (Creative Visions, Governor's 10%, PY06); (16) ES-15695 (MSFW, Wagner Peyser, PY06); (17) PI-15662 (Navigator, FY06); (18) AA-15479 (New Iowan's Center, Governor's 10%, PY06); (19) ES-14821 (New Iowan's Center, New American's, PY06); and (20) UI-15121 (Tax Redesign, Unemployment Grant, FY06);
- c. Any claims for unallowable costs from Wagner Peyser payments in PY 2003, 2004, and 2005 in the amount of \$179,303 pertaining to Creative Visions program (Contracts ES-13054, ES-13996, ES-14864);
- d. Any claims for unallowable costs from Workforce Investment Act Youth payments in PY 2005 in the amount of \$231,768 used by Iowa Comprehensive Human Services (Contract AA-14675); and
- e. Any claims for CIETC excessive compensation costs for Program Years 2003 through 2006 that were funded by Temporary Assistance for Needy Families.

12. Dismissal of contested case proceeding by CIETC and Member Governments. In further consideration, CIETC and Member Governments agree to dismiss with prejudice the contested case proceeding entitled *Central Iowa Employment and Training Consortium v. Iowa Workforce Development, Division of Workforce Center Administration*, DIA No. 06 IWD027 upon execution of this Agreement. CIETC will also withdraw the tort claims filed against the State of Iowa under Iowa Code chapter 669 within 30 days of the effective date of this Agreement.

13. Limited Release by the State of Iowa. In consideration of the foregoing and the agreements contained in this Agreement, and except as provided in paragraph 14 and 15, the State of Iowa irrevocably and unconditionally releases, acquits, and forever discharges CIETC and the Member Governments, and all of their officers, directors, employees, agents, and attorneys, from any and all liability from the claims, demands, and causes of action of every nature that relate to or arise out of certain payments by or through CIETC that were improper or unallowable under federal and state law for the Program Years 2003 through 2006 identified below:

- a. Any civil claims, including unjust enrichment, breach of contract, negligence, tort, or fraud, related to or arising out of the improper or unallowable payments by or through CIETC from funds received from sources identified in sub-paragraphs b-e below;
- b. Any claims for CIETC excessive executive compensation costs for Program Years 2003 through 2006 that are allocable to the grants (1) AA-12925 (WIA Formula Funds, PY 03/FY04); (2) AF-13624 (Direct Federal Grant, PY 03); (3) EM-10882 (National Emergency Grant, FY02); (4) AA-13798 (Creative Visions, Governor's 10%, PY04); (5) ES-13996 (MSFW, Wagner Peyser, PY04); (6) AA-13798 (WIA Formula Funds, PY04/FY05); (7) AF-13624 (Direct Federal Grant, PY 04); (8) AA-14675 (Creative Visions, Governor's 10%, PY05); (9) ES-14864 (MSFW, Wagner Peyser, PY05); (10) PI-14913 (Navigator, FY05); (11) AA-14675 (NEOF, Governor's 10%, PY05); (12) AA-14675 (New Iowan's Center, Governor's 10%, PY05); (13) AA-14675 (WIA Formula Funds, PY05/FY06); (14) AF-13624 (Direct Federal Grant, PY05); (15) AA-15479 (Creative Visions, Governor's 10%, PY06); (16) ES-15695 (MSFW, Wagner Peyser, PY06); (17) PI-15662 (Navigator, FY06); (18) AA-15479 (New Iowan's Center, Governor's 10%, PY06); (19) ES-14821 (New Iowan's Center, New

American's, PY06); and (20) UI-15121 (Tax Redesign, Unemployment Grant, FY06);

- c. Any claims for unallowable costs from Wagner Peyser payments in PY 2003, 2004, and 2005 in the amount of \$179,303 pertaining to Creative Visions program (Contracts ES-13054, ES-13996, ES-14864);
- d. Any claims for unallowable costs from Workforce Investment Act Youth payments in PY 2005 in the amount of \$231,768 used by Iowa Comprehensive Human Services (Contract AA-14675); and
- e. Any claims for CIETC excessive compensation costs for Program Years 2003 through 2006 that were funded by Temporary Assistance for Needy Families.

14. **Reserved Claims and Defenses.** The parties reserve all claims, defenses, set-offs, and counter-claims relating to matters not expressly released by this Agreement. If, and to the extent of any advances by ICAP for a Member Government and relating to the Intergovernmental Dispute, ICAP may at any time elect to receive from other Member Governments a release of rights that may exist against that Member Government under the CIETC 28E Agreement or, alternatively, an assignment of those rights. Recourse by and between Member Governments under the CIETC 28E Agreement is not otherwise impacted by this settlement.

15. **Limitations on releases.** Nothing in paragraphs 11, 12, or elsewhere in this Agreement releases Ramona Cunningham, John Bargman, Karen Tesdell, Archie Brooks, Dan Allbritton, Deb Dessert, Jane Barto, or any other person charged criminally regarding matters otherwise released in this Agreement, nor with respect to assigned claims referenced in paragraph 4 above. Nor does anything in paragraphs 11, 12, or elsewhere in this Agreement release criminal acts committed by any person or entity.

16. **Acknowledgment of reading and understanding and consultation with counsel.** Each party, by signing this Agreement, acknowledges and agrees that it has carefully read and understood all provisions of this Agreement, and that it has entered into this Agreement knowingly and voluntarily. Each party acknowledges that it has consulted with or had the opportunity to consult with legal counsel before signing this Agreement.

17. **Entire Agreement.** This Agreement identifies all the consideration that the State of Iowa will receive from CIETC and the Member Governments. CIETC and the Member Governments expressly acknowledge no other parties or others acting on their behalf have made any promise for any additional consideration.

18. **No Admission of Liability or Wrongdoing.** All parties deny any wrongdoing and liability to the other. The parties are settling for economic reasons, to buy peace, and to avoid the time, cost, and uncertainties of contesting the matter. This is a no-fault settlement.

19. **Remaining CIETC Resources.** All remaining funds held in the name of CIETC, as of the effective date of this Agreement, shall be paid into an escrow account pursuant to an escrow agreement governing how those funds will be administered and ultimately disbursed.

- a. The CIETC Member Governments will appoint a committee of three persons to assume proprietary control and oversight of the escrow account for and on behalf of CIETC and the Member Governments for the limited purposes set forth herein in conjunction with winding up the affairs of CIETC, and to determine the propriety of expenses charged to the escrow account.
- b. The escrowed funds will be used for expenses associated with the defense and disposition of any litigation matters and otherwise incurred in winding up CIETC affairs.
- c. Upon the payment of all such expenses, any balance remaining in the escrow account will be paid in accordance with the following priorities: (1) ratably to the Member Governments in proportion to their contributions to the settlement and/or CIETC operations; and (2) any additional recoveries will be paid to Member Governments according to the formula set forth in the CIETC 28E Agreement. Any funds received by a Member Government in excess of reimbursements will be earmarked and expended for employment creation, employment training and/or retraining and/or related activities.

20. **Payments to the Auditor.** CIETC will pay the Auditor for any costs incurred conducting audit services, and the Auditor will issue a formal, final audit report

through the fiscal year end June 30, 2006. IWD will be responsible to pay for any work that it asks the Auditor's Office to perform involving CIETC. The Region XI Service Provider will pay for any subsequent audits in the ordinary course after June 30, 2006.

21. **Public Records.** The parties acknowledge that this Agreement is a public record under chapter 22 of the Iowa Code and that it is available for public inspection and copying.

22. All parties are executing this Agreement solely in reliance upon their own knowledge, belief and judgment and not upon any representations made by any of the other parties or others on their behalf.

23. Each party represents to the other that:

- a. It has read this Agreement;
- b. It understands this Agreement;
- c. It has freely and voluntarily signed this Agreement;
- d. The individual or individuals that signed this Agreement have the power and authority to bind the party;
- e. It has taken all steps required for the Agreement to be a binding, enforceable obligation; and
- f. It has paid any settlement amounts from non-federal sources of money.

24. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Iowa. If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable, and a court of competent jurisdiction is authorized to reform the Agreement to achieve as nearly as legally possible the intent, purpose, and economic provisions of this Agreement. The respective parties each undertake and agree to execute such documents and perform such acts as may be reasonably necessary to effectuate the terms and conditions of this Agreement.

25. **Construction Against Party Drafting.** The parties acknowledge that all parties, through their legal counsel, played an equal role in drafting and/or had an equal opportunity to review and/or modify the provisions set forth in this Agreement. Thus, in the event of any misunderstanding, ambiguity, or dispute concerning this Agreement's provisions, or interpretations, no rule of construction regarding authorship of any provision shall be applied that would result in having this Agreement interpreted against any party.

26. **Effective Date.** This Agreement shall be effective upon execution by and on behalf of all parties. Signatures evidenced by fax or sent electronically shall be deemed originals.

STATE OF IOWA

By: _____
Elisabeth Buck, Director, Iowa Workforce Development

Approved as to legal form & content: _____

By: _____
Grant K. Dugdale
Assistant Attorney General, Attorney for the State of Iowa

CENTRAL IOWA EMPLOYMENT AND TRAINING CONSORTIUM

By: _____

Approved as to legal form & content:

By: _____

Jonathan Wilson, Attorney for Central Iowa Employment and Training Consortium
and Member Governments

CITY OF DES MOINES

By: _____

BOONE COUNTY

By: _____

DALLAS COUNTY

By: _____

JASPER COUNTY

By: _____

MADISON COUNTY

By: _____

MARION COUNTY

By: _____

POLK COUNTY

By: _____

STORY COUNTY

By: _____

WARREN COUNTY

By: _____